

No. 5.
to which the
drawer's son
and represen-
tative has ad-
hibited his
subscription.

false and fabricated instrument could not be made the foundation of any action.

To this it was answered, that in the law of Scotland, there are evidently two species of bills perfectly distinct from each other. An inland bill, before the late statute 1772, was considered as a permanent security, which did not prescribe within 40 years, and accordingly interest then was and still is current upon them as such. Such a bill therefore is principally intended as a document of debt and permanent security; which is perfectly incompatible with the nature of a bill of exchange used by merchants, which is regulated by the laws of commerce, and which does not bear interest till dishonoured.—In the law of Scotland, it is perfectly sufficient if the drawer adhibits his name any time before demanding payment. The natural temper of man always delays what he can so easily do at any time. Matters continue in this situation till the drawer's death transmits to his representative a document of debt, unquestionably good when he was alive, but in a moment rendered ineffectual by his death. Had the subscription of the drawer been absolutely necessary, the law would have required it to have been adhibited at the same time with that of the acceptor; therefore it is contrary to justice to maintain that the accidental death of the drawer should liberate the acceptor from his obligation. A right which was competent to the defunct when alive, must also be transmitted to his heir and representative, *nam hæres est eadem persona cum defuncto*. It was determined by the Court, 9th December 1775, in the case of Cameron, (not reported,) that action lay upon an inland bill against the acceptors, though this bill wanted the pursuer's subscription.

The Lord Ordinary pronounced the following interlocutor: “ In respect that “ it is acknowledged by the pursuer, that the subscription to the indorsation in “ his favour, is not the subscription of the drawer of the bill, Finds that no “ action lies at his instance for payment of the contents of said bill, assolzie “ the defender, and decerns.” To this interlocutor, upon advising a reclaiming petition and answers,

The Court adhered.

Lord Ordinary, *Ellick*.

Act. *A. Bruce*.

Alt. *W. Nairne*.

D. C.

* * See No. 18. p. 1676.

1798. November 21.

JAMES ROBERTSON, *against* JAMES OGILVIE, Trustee for the Creditors of
JAMES BURNSIDE.

No. 6.
An indorsation to a bill within sixty

THE estate of James Burnside was sequestrated on the 27th April 1793; and James Ogilvie was appointed trustee for his creditors.

Burnside was at this time in an account-current with James Robertson,

| | | | | |
|---|----------|--|-----------|--|
| | Dr. | | Cr. | |
| 1792. | | 1793. | | |
| Dec. 10. To Robertson's acceptance without value, | £400 0 0 | March 9. By Arch. Muir's bill indorsed to Robertson, | £400 15 3 | |
| 1793. | | April 15. By cash, | 197 12 0 | |
| March 14. To cash, | 260 0 0 | Balance due to Robertson, | 61 12 9 | |
| | £660 0 0 | | £660 0 0 | |

No. 6.
 days of bankruptcy, which had been reduced so far as it related to prior debts, sustained as a security for money advanced between the date of the indorsation and actual bankruptcy.

Ogilvie brought a reduction of the indorsation to Muir's bill on the act 1696, C. 5. and obtained decree in absence.

Robertson raised a reduction-reductive.

The Lord Ordinary assolizied the defender.

Robertson, in a reclaiming petition, contended, *1mo*, That the act 1696 did not apply to the indorsation in question; *2do*, That at least he ought to be allowed retention to the extent of the £260. afterward advanced by him. The Lords (11th March 1797) refused the petition on the first point*; but remitted to the Lord Ordinary to hear parties on the second.

His Lordship "sustained the compensation pleaded, to the amount of "£260."

Ogilvie now reclaimed, contending, *inter alia*, That as it was established that Robertson had got possession of the bill in consequence of a constructive fraud, he could not be allowed to plead compensation on it.

Answered: The sanction of the act 1696 applies only to securities for prior debts, and not where money is either immediately or afterward advanced by the creditors; 1st March 1791, Stein's Creditors against Sir William Forbes, J. Hunter and Company, No. 204. p. 1142.

The Court, on advising the petition with answers, being clear that the judgment was right, adhered.

Lord Ordinary, *Stonefield*. Act. *Greenshields*. Alt. *Fletcher*. Clerk, *Colquhoun*.
 D. D. Fac. Coll. No. 91. p. 210.

1799. January 19. WILLIAM HENDERSON against ALEXANDER DUTHIE.

JOHN WEMYSS and Son of Dundee, granted a promissory-note, dated 20th April 1797, and payable three months after date, to Alexander Duthie of Aberdeen. After indorsing it himself, and getting it indorsed by William Downie and Alexander Cheyne, Mr. Duthie discounted it with William Henderson, agent for the Bank of Scotland at Aberdeen, by whom it was transmitted to Edinburgh to James Fraser their treasurer.

The note became due on the 22d July 1797, when it was presented to Wemyss and Son; but they having become insolvent some weeks before, it

No. 7.
 The holder of a promissory-note found, in the circumstance of this case, to have preserved his recourse against an indorser, although a delay of twenty-one days had

* See August 10th 1780, Campbell against Macgibbon, No. 202. p. 1139.